

S M A L L C L A I M S

HOW TO FILE A SMALL CLAIM

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This guide is designed to help you understand the process of filing a small claim in the District Court of Maryland. Small claims are handled less formally than other cases. While you can hire an attorney if you choose, the rules of evidence and procedure in small claims cases are simplified to make it easier for individuals to represent themselves.

To be tried as a small claim in District Court, your case must meet the following conditions:

- Your claim is for \$5,000 or less; and,
- Your claim is for money only, not the return of property or performance of a service; and,
- You are not planning to request any discovery such as interrogatories (written questions that the other side must answer under oath in writing, before trial).

If you do not meet all three of these conditions, you do not have a small claim, and the information in this guide does not apply to your case.

While the process of filing a small claim is simple, the actions required at each step will vary depending on the situation. This guide will give you information about what process you need to follow and what decisions you need to make at each step.

If at any point your case seems more complex than what this guide covers, you may want to consider hiring an attorney to assist you.

STEP 1: TRY TO RESOLVE THE ISSUE OUT OF COURT

There are several reasons you should try to resolve your issue before going to court. First, it will likely save you time, emotional stress, and money. Second, your attempts to resolve the issue on your own may help you gather evidence that will help prove your case if you do need to go to court. To settle the case without going to a trial:

TALK WITH YOUR OPPONENT

The first thing you should always do is talk to the person with whom you have a dispute. Do this in person, if possible. To prepare for this conversation, think about how much money you feel you are owed. Then consider how much you are willing to compromise to settle the dispute without going to court. If you can reach an agreement, be sure to put it in writing. Both you and your opponent should sign the written agreement as soon as possible.

WRITE A LETTER

If talking with your opponent doesn't work, write a letter stating the reasons why the person or business owes you money and request payment. When you write the letter, begin by describing the problem.

Clearly and politely state the resolution you want, and include a date by which you expect this to be done. Tell the person that if you are not paid, you plan to sue in small claims court. Keep a copy of the letter.

MEDIATION

The District Court's Alternative Dispute Resolution Program may be helpful. Mediation is less formal than going to court, and is more likely to result in a win-win solution, rather than one party winning and the other party losing. If you and your opponent attempt mediation, but cannot reach an agreement, you still have the right to proceed to court. For further information about mediation, ask for the brochure *Mediation – Is Going to Trial Your Best Option? – Alternative Dispute Resolution*. You can also call the *Alternative Dispute Resolution Office*. (410) 260-1676 for further information .



STEP 2: CONSIDER FILING A CLAIM

If you decide you are not able to reach a satisfactory solution by talking with the individual, writing a demand letter, or through mediation, then you may wish to consider filing a claim. To decide whether to file your claim, consider the following questions:

DECISION POINT: ARE YOU LIKELY TO WIN?

To win, you must file your claim within the statute of limitations. The statute of limitations is an expiration date—if you don't file your case within a certain amount of time, your claim is no longer valid. Most claims are valid for no more than three years. You should try to resolve any debts as quickly as possible to avoid exceeding the statute of limitations.

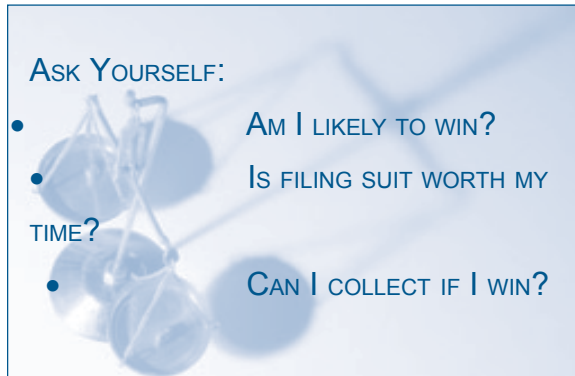
You also have to be able to prove your case. In court, the person bringing the case, known as the "plaintiff," has "the burden of proof." Your job as the plaintiff is to prove your case by a "preponderance of the evidence," meaning you must prove that you are most likely right. The "defendant"—the person or business you are suing—doesn't have to prove anything. The defendant just has to keep you from proving your case.

So, what do you need to prove your case?

Evidence

You must present evidence, which is anything that helps you prove your case,

such as testimony from a witness, a contract, a letter, an invoice, or an estimate. Whether your claim is business or personal, you should look at your case to make sure you have the necessary evidence to prove your claim before you file suit.



ASK YOURSELF:

- **AM I LIKELY TO WIN?**
- **IS FILING SUIT WORTH MY TIME?**
- **CAN I COLLECT IF I WIN?**

Exhibits

Exhibits will also help you prove your case. Exhibits are documents or other tangible items that tell the story of your case. Some exhibits are evi-

dence, such as the items mentioned above—contracts, letters, invoices or estimates. Other exhibits are items that you have created; for example, an interest worksheet that explains how much interest the defendant owes you.

Ideally, you should have an exhibit that reflects each stage in your case. For example, in a contract case your exhibits should show:

- what you were hired to do;
- how much the defendant agreed to pay;
- how much (if anything) the defendant did pay;
- how much is still owed to you plus interest; and
- your efforts to collect the balance before filing suit.

When you put together exhibits, imagine the judge leaving the courtroom with nothing but your exhibits in his hand. Your exhibits should tell the whole story.

Note: When assembling your complaint for filing, do not send your originals (checks, letters, contracts, etc.) as exhibits. Copies are fine. In addition, make sure to save a full set of all exhibits in a separate file because you will probably want to use those same documents at trial. You will need additional copies of each exhibit presented during the trial, so you may want to make extra copies at this time.

DECISION POINT: IS IT WORTH YOUR TIME TO FILE A SUIT?

There are two major issues to consider before you answer this question. First, what is the most money (maximum recovery) you are likely to be awarded if you win? And second, if you win, how likely is it you will be able to collect the money from the defendant? The following may help you think through these important questions.

What is your maximum recovery?

Sometimes it may cost you more in time, effort, and money to go through a trial than you could recover if you win the case. To understand what your maximum recovery is, answer the following questions:

What are you owed?

The answer to this question is “the amount of the debt.” In the case of a debtor’s failure to render full payment when due, the amount owed is the balance the debtor should have paid.

Can you recover interest?

If you specifically informed the debtor in writing (e.g., on your invoices, estimate, or in a signed contract) that interest would be charged on all overdue balances it is likely you can recover interest.

On the other hand, if you did not inform the debtor that he would be charged interest on overdue bills, chances are you will not be able to recover interest in your lawsuit.

Are you allowed to claim anything else, such as penalties, bounced check fees, or court costs?

In addition to recovering unpaid bills and interest, you may be entitled to:

- **Statutory Penalties**—If someone pays you with a check that bounces, you are allowed to claim the amount the check was written for plus a bounced check fee. You may also file criminal charges—a misdemeanor or a felony depending on the amount of the check.
- **Court Costs**—You will have to pay certain fees when you file your case. If you win your case, the judge could order the defendant(s) to reimburse you for your court costs.
- **Attorney’s Fees**—Reimbursement for attorney’s fees almost always depends entirely upon the wording of any billing arrangements you made with your debtor in advance. If both parties did not agree in writing to pay attorney’s fees in the event of a dispute, it is not likely that you will be awarded attorney’s fees.

- You cannot recover:
- The value of your time,
 - Your travel expenses going back and forth to court, or
 - Compensation for your inconvenience and aggravation.

DECISION POINT: CAN YOU COLLECT IF YOU WIN?

If the judge decides in your favor, you may not be able to collect the money you are owed. While some individuals and businesses will pay, others may have filed bankruptcy, may not have the money to pay you, or may be unwilling. If the defendant does not willingly pay the amount owed, you may want to pursue your other options. A clerk can explain these options to you.

STEP 3: FILING A SMALL CLAIM

There are four basic steps in the small claims process:

- a. The plaintiff (the person seeking the money) files a Complaint form with the court.
- b. The plaintiff pays the filing fee. Check the District Court's Civil Cost Schedule for fees.
- c. The court issues a Writ of Summons to officially notify the defendant that a suit has been filed.
- d. Proof is submitted to the court that the defendant has been notified, or served.

The court has standardized paperwork and procedures for dealing with each step. The forms are available at the clerk's office at any District Court location.

COMPLETING THE COMPLAINT FORM

The Complaint form is the most important document you will file in your case. The Complaint form tells the court:

- That you are bringing the suit;
- Who you are filing suit against;
- Why you are filing suit; and,
- How much money you are seeking.

The following explains each section of the Complaint form in detail. The three sections of the form are shown on the opposite page.



DISTRICT COURT OF MARYLAND FOR

LOCATED AT (court address)

DC/CV 1 (Rev. 10/2003)

COMPLAINT ☐ \$5,000 or under ☐ over \$5,000 ☐ over \$10,000Clerk: Please docket this case in an action of ☐ contract ☐ tort
☐ replevin ☐ detinue.

The particulars of this case are:

CASE NO.

CV

PARTIES

Plaintiff:

VS.

Defendant(s):

1.

Serve by:
☐ Certified
Mail
☐ Private
Process
☐ Constable
☐ Sheriff

2.

Serve by:
☐ Certified
Mail
☐ Private
Process
☐ Constable
☐ Sheriff

3.

Serve by:
☐ Certified
Mail
☐ Private
Process
☐ Constable
☐ Sheriff

4.

Serve by:
☐ Certified
Mail
☐ Private
Process
☐ Constable
☐ Sheriff

ATTORNEYS

For Plaintiff - Name, Address, Telephone Number & Code

(See Continuation Sheet)

The Plaintiff claims:

☐ \$ _____ plus interest of \$ _____ and
attorney's fees of \$ _____ plus court costs.☐ Return of the property and damages of \$ _____
for its detention in an action of replevin.☐ Return of the property, or its value, plus damages of
\$ _____ for its detention in action of detinue.☐ Other:
and demands judgment for relief.

Signature of Plaintiff/Attorney/Attorney Code

Telephone Number

APPLICATION AND AFFIDAVIT IN SUPPORT OF JUDGMENT

Attached hereto are the indicated documents which contain sufficient detail as to liability and damage to apprise the Defendant clearly of the claim against the Defendant, including the amount of any interest claimed.

☐ Properly authenticated copy of any note, security agreement upon which claim is based ☐ Itemized statement of account ☐ Interest work sheet
☐ Vouchers ☐ Check ☐ Other written document ☐ _____ ☐ Verified itemized receipt bill or estimateI HEREBY CERTIFY: That I am the ☐ Plaintiff ☐ _____ of the Plaintiff herein and am competent to testify to

(Date: / / Partnering Office)

the matters stated herein, which are made on my personal knowledge, that there is justly due and owing by the Defendant to the Plaintiff the sum set forth in the Complaint.

☐ That _____

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the above Complaint are true and I am competent to testify to those matters. The Defendant is not now in the military service, as defined in the Soldier's and Sailor's Civil Relief Act of 1942 with amendments, nor has been in such service within thirty days hereof.

Date

Signature of Affiant

Section 1-Parties Involved

Courthouse Address—Write in the address of the district courthouse where you intend to file your case. You should file your complaint in the county where the debtor lives, carries on regular business or is employed.

Case Number—Leave this box blank. The clerk will fill in the case number when you file your Complaint form and pay the filing fee. Your case number will be displayed on all court notices. Because this number is the court’s way of identifying your case, it is extremely important that you place the number on everything you send to the court.

Parties—The “parties to the lawsuit” are you (or your company) and the person, people, or companies you are suing. When filling out these spaces, it is important to use the correct full name and address of the parties. All court correspondence will be sent to the addresses you provide on the Complaint form, so make sure they are accurate. **If you do not use the correct names and addresses, your case could be delayed or dismissed.**

Plaintiff—The plaintiff is either you or your company, and the person or company identified here will receive the judgment if the case is decided in your favor. Under the agreement you had with the defendant, is the money is due to you personally or to your company?

- If the money is owed to you as an individual, be sure to use your full, correct name and your correct **home** address.
- If the money is owed to your business, and you are not sure of the exact, formal name of your company, either ask your lawyer or accountant or check the full name shown on your

Section 1 of Complaint Form

LOCATED AT (COURT ADDRESS)	
200 Duke St. Prince Frederick 20678	
CASE NO. (to be filled in by court clerk)	
PARTIES	
Plaintiff: John Jones 123 Oak St. Anywhere, MD 20600	
vs.	
Defendant(s): 1. Barbara Smith 123 Maple Lane Anywhere, MD 20600	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
2. Barbara's Cleaning Service, Inc. 123 Spruce Avenue Anywhere, MD 20600	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
Serve on Resident Agent: 3. Bob's Insurance Company 123 Pine St. Anywhere, MD 20600	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
4.	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
Attorneys	
For Plaintiff - Name, Address, Telephone No. & Code	

company's tax returns. Use your primary **business** address.

The Defendant—The defendant is the person or business that owes you the money. You should fill in this space with the name and address of the defendant(s).

Naming the right defendant is just as important as naming the plaintiff correctly. This is the person or people who will be served with the complaint and summons. Ask yourself, "Who is responsible for paying this bill?"

Sometimes, the answer will be more than one person or company. For example, a customer bounces a check drawn on a joint account. In that case, name every person named as an account owner. You should name every person or company who would be legitimately responsible for the debt.

Suing an Individual—If you name a person as a defendant, use his or her full name, complete with "Jr.," "III," or any other such suffixes.

An individual must be at least 18 years old to be named as a defendant. If the debtor in your case does not meet this requirement, or is older than 18 but has a legal guardian, the defendant may in fact be the debtor's parent or guardian or anyone else who gives care or has custody of the person or estate.

Suing a Company—When you are suing a company, naming the defendant can be complicated. The defendant is not the company's manager or even its president, but the company itself, unless someone personally guaranteed the debt for the company.

For example, Barbara Jones may sign personally to guarantee payment for products bought by Barbara's Cleaning Services, Inc. In this case, you would name both Barbara Jones and Barbara's Cleaning Services, Inc. as defendants.

Always put the full, formal business name on the Complaint form, such as "John Debtor Enterprises, Inc." or "Debtor and Son, Ltd." Finding the correct name may be as easy as looking on a piece of stationery, a check the defendant may have given you, or the sign on the front of the defendant's office. Be warned, however, that any of these places may display the trade name ("Don's Clocks" for example) as opposed to the full, formal corporate name.

To find the full, formal name, check with the State Department of Assessments and Taxation (SDAT).

Resident Agent—If SDAT does have a listing of the company, it will also have a listing of the person or company authorized to accept service of suit papers, called the *resident agent*. State law requires corporations and/or limited liability companies (LLCs) to appoint a resident agent. A resident agent is the only person (or company) that can accept service of your court papers on behalf of a corporate defendant.

The resident agent should **not** be listed as the defendant. Instead, list the name and address of the company responsible for the debt as the defendant. Next to or below the defendant's name, write *Serve on Resident Agent*. You would then list the resident agent's name and address. Please see the completed example on the opposite page.

If you can't find a listing for a resident agent, serve your papers on an officer of the business, such as the president. Use the name and address of the business as you have it in your files when completing the paperwork.

Serve by—Next to the space reserved for each defendant's name and address is a small box with the heading "Serve by:" Your choices are:

- Certified Mail
- Private Process
- Constable
- Sheriff

When defendants are "served," they are notified that a lawsuit has been filed against them and summoned to appear for trial by a Writ of Summons, which the court issues after you file your complaint. The Writ of Summons includes the case number and a trial date, time and location. One copy of the document must be delivered to the defendant, along with a copy of the Complaint form and supporting documents.

There are several different ways to deliver these documents to the defendant, and the fees required vary for each. If your claim has several defendants, some who may be easy to serve and some who may be evasive, you are free to use any combination of these methods.

Option 1: Certified Mail

If you plan to notify the defendant by mail, you must use certified mail (also called “registered mail” or “return receipt requested”) to send the complaint, summons, and supporting documents. You may send it yourself, in which case the court will mail you a copy of the Writ of Summons, or the court will send it for the cost of the mail and a small service fee. It is important to use certified mail, because this is the only way you will have a “receipt” that the mail was delivered to the defendant. If the defendant does not accept and sign for the certified mail, service has not been made. **The receipt must be submitted to the court as proof that the defendant was served.**

Save copies of all documents sent by mail, as well as the postal receipts from certified letters and packages.



Option 2: Private Process Server

A “private process server” is a person who hand delivers court documents (such as complaints, summonses, and subpoenas) to people. If you choose to serve the defendant by private process, the court will mail you a copy of the Writ of Summons.

Any person, 18 years or older, who is not party to the lawsuit may serve the defendant. This individual will sign a document (called the “Affidavit of Service”) stating that the complaint, summons, and supporting documents were served on the defendant. **The Affidavit of Service is the proof you need to send to the court that a private process server has served the defendant.**

There are many companies in the business of serving defendants in civil claims. You can find such companies by looking in the business yellow pages or even by calling a local law firm and asking for a reference. You should always ask about the rates before you hire. You may also use a family member or friend, as long as they are not a party to the lawsuit, to privately serve the defendant with the papers.

Options 3 & 4: Sheriff or Constable

One of the county sheriff’s or constable’s responsibilities is serving defendants in civil cases. Check the Civil Cost schedule for sheriff or constable service costs.

The Court will deliver the Writ of Summons, Complaint form and supporting documents to the sheriff or constable for service on the defendant. After serving the papers, **the sheriff or constable returns a second copy of the Writ of Summons to the court, certifying that the defendant has been served.**

Attorneys—If your attorney files the Complaint form on your behalf, his or her name and address will be listed in this space.

If you are proceeding without an attorney, simply put your own name, address (list your business address if this is a business debt), and telephone number in the space designated for “plaintiff’s attorney.” After your name, you should place the underlined Latin words “pro se.” This tells the court that you are not an attorney.

You have now completed section 1 of the Complaint form (see sample at right).

Section 2- Description

Complaint—Remember that Small Claims Court is limited to claims for less than \$5,000. Check the first box.

Contract cases involve non-payment for money owed to you under a contract. *Tort* cases involve a harm that has been done to you and that has resulted in monetary damages, such as someone damaging your car. Check the box that applies to your situation.

The Particulars of Your Case—In this section, briefly explain to the judge why you are entitled to the money you are claiming. Keep the information short and simple.

Section 1 of Complaint Form

LOCATED AT (COURT ADDRESS)	
200 Duke St. Prince Frederick 20678	
CASE NO. (to be filled in by court clerk)	
PARTIES	
Plaintiff: John Jones 123 Oak St. Anywhere, MD 20600	
vs.	
Defendant(s): 1. Barbara Smith 123 Maple Lane Anywhere, MD 20600	Serve by: <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
2. Barbara's Cleaning Service, Inc. 123 Spruce Avenue Anywhere, MD 20600	Serve by: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
Serve on Resident Agent: 3. Bob's Insurance Company 123 Pine St. Anywhere, MD 20600	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
4.	Serve by: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Private Process <input type="checkbox"/> Constable <input type="checkbox"/> Sheriff
Attorneys	
For Plaintiff - Name, Address, Telephone No. & Code John Jones, <u>pro se</u> 123 Oak St. Anywhere, MD 20600	

Sample Interest Worksheet

[Your Company] * IN THE
Plaintiff *
v. * DISTRICT COURT
[John Debtor] *
and * FOR
[Jim Debtor] individually *
and t/a [Jim's Cleaners] * _____ COUNTY
*
Defendants * Case Number: [Number]

*

INTEREST WORKSHEET

Principal Amount: \$980.70
Interest: 10% per Agreement of 10/22/98:
Interest from 5/22/99 through 1/22/00:
245 days x \$.27 per day: \$ 66.15
TOTAL \$1,046.85:

Total Interest \$ 66.15
Total Principal: \$980.70

Interest continues to accrue at the rate of \$.27 per day.

The Plaintiff

Claims—This section allows you to tell the court how much you are owed. Check the first box and enter the amount of your claim, minus interest payments. As an example, let's assume that you were claiming the following amounts:

- \$980.70 unpaid bill
- \$66.15 interest (to determine how much interest you are owed, see below for information on completing an interest worksheet).

In the first blank, you should enter the

amount you are claiming. In the interest blank, you would enter any interest. You will also need to indicate on the Complaint form whether you are claiming "attorney's fees" as part of your case. If you are acting as your own attorney, you are not permitted to make a claim for attorney's fees. If you are representing yourself, you would leave this space blank or fill in \$0.00.

Interest Worksheet

If your contract entitles you to collect interest on overdue balances, prepare an interest worksheet. You may find it helpful to use the format shown above. This worksheet should be attached to your Complaint form as an exhibit and should show the calculations you used to determine the amount of interest you are claiming. Your worksheet must contain the following information:

- The interest rate;
- The amount of money on which interest is being assessed;
- The length of time over which the interest has been assessed; and
- The rate at which interest continues to accrue.

Because the judge will not be reviewing the case until after the complaint is filed, your worksheet should indicate the rate at which interest is accruing. The easiest way to express this is to state at the bottom of the worksheet that interest will continue to accrue at the rate of \$. per day.

You have now completed
section 2 of the Complaint form
(see sample at right).

You are not required to complete this section. If you have documents that support your case, you should complete this application. It does not take any extra time or money, and it could save you an enormous amount of time and effort.

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Section 2 of Complaint Form

COMPLAINT ☒ \$5,000 or under ☐ over \$5,000 over ☐ \$10,000

Clerk: Please docket this case in an action of ☒ contract ☐ tort ☐ replevin
☐ detinue.

The particulars of this case are:

(See Continuation Sheet)

The Plaintiff claims:

☒ \$ 980.70 plus interest of \$ 66.15 and attorney's fees of \$ 0 plus court costs.

☐ Return of the property and damages of \$ _____ for its detention in an action of replevin.

☐ Return of the property, or its value, plus damages of \$ _____ for its detention in an action of detinue.

☐ Other:
and demands judgment for relief

Your signature here

Signature of Plaintiff/~~Attorney~~/Attorney Code

Telephone Number: 301-555-1111

Section 3 of Complaint Form

Application and Affidavit in Support of Judgment

Attached hereto are the indicated documents which contain sufficient detail as to liability and damage to apprise the Defendant clearly of the claim against the Defendant, including the amount of any interest claimed.

Properly authenticated copy of any note, security agreement upon which claim is based Itemized statement of account

Interest work sheet Vouchers Check Other written document Verified itemized repair bill or estimate

I HEREBY CERTIFY: That I am the Plaintiff of the Plaintiff herein and am

competent to testify to the matters stated herein, which are made on my personal knowledge; that there is justly due and owing by the Defendant to the Plaintiff the sum set forth in the Complaint.

That

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the above Complaint are true and I am competent to testify to these matters. The Defendant is not now in the military service, as defined in the Soldier's and Sailor's Civil Relief Act of 1940 with amendments, nor has been in such service within thirty days hereof.

If the defendant does not file a Notice of Intention to Defend and you have completed this section of the Complaint form, the judge will review your Complaint form and supporting documents. If the judge believes that your documents prove your case, the judge can rule in your favor, without a trial. This type of judgment is called an "Affidavit Judgment."

Completing this section of the form does not guarantee that the judge will grant you an affidavit judgment. The judge might require you to appear in court at a later date to present further evidence.

However, **you are not eligible for affidavit judgment if you do not complete this section.** Indicate on the form which type of documents you have to support your case. You must sign and date the bottom of this section.

You have now completed Section 3 of your Complaint form (see sample above). It's time to submit your Complaint form, with supporting documents attached, to the Clerk's Office in the District Court for the county in which you are filing suit.

You will have to make several copies of the complaint and exhibits—one copy for the court and one set for each defendant. You will also keep a copy for yourself, of course.



KEEP A COPY OF
ALL OF YOUR
CORRESPONDENCE
WITH THE COURT
AND THE
DEFENDANT.

THE FILING FEES

Once you complete the Complaint form and attach your exhibits, file them with the court and pay the required fees. In addition to the cost of filing the case, there is also a fee if you want the court to have the defendant served (either by mail or by constable/sheriff). Check the current District Court Civil Cost schedule when you pick up your court forms.

NOTIFYING THE DEFENDANT

After you file your complaint, the court issues the Writ of Summons for service on the defendant. The bottom half of the writ includes the “Notice of Intention to Defend.” Defendants have 15 days from the date that they receive the summons to file this notice with the court (out-of-state defendants and those with resident agents have 60 days to file the notice). By filing the notice, the defendant is letting the court know that he or she plans to argue that you are not entitled to the damages you are claiming.

RENEWING A SUMMONS

The number of days that a summons is valid will be printed on the form. If the summons is not successfully served on the defendant within that time period and you wish to try to serve the defendant again, the summons must be renewed.

To renew a summons, complete a “Request for Summons” Form, checking the space marked “renewal.” Check the Civil Cost schedule and send the renewal fee to the court with the completed renewal request.

SUBMITTING PROOF THAT THE DEFENDANT HAS BEEN NOTIFIED

Once the defendant has been served, the court must receive Proof of Service. If the court does not receive Proof of Service within the time allotted for the defendant to file an Intention to Defend, you may not be able to present your case on the trial date.

As noted above, there are various ways to notify the court that the defendants have been served. Once this proof is received on each of the defendants named, the court will schedule a hearing. Here is a summary of the type of proof needed for each method of serving a defendant:

Certified Mail

If the court serves the complaint and summons by certified mail, you will be notified only if it was not delivered. You may then decide whether to attempt another method of serving the defendant.

If you sent the complaint and summons by certified mail yourself, you must return the receipt of delivery to the court. Mail the completed form back to the court along with a cover letter confirming that you are enclosing proof of service for filing in this case.

Private Process Server

The private process server must sign a document, called the “Affidavit of Service”, stating that the papers were served on the defendant and send it to the court. Make sure that your private process service understands their obligation to notify the court that your summons has been served on each defendant.

Sheriff or Constable

If you decided to have the defendant served by a sheriff or constable you will receive notification that the defendant has been served. If the sheriff or constable was unable to serve the defendant after several attempts, you can get the summons back from the court to try to serve it some other way. You may need to renew the summons at this point if it has expired.

STEP 4: HANDLING THE DEFENDANT’S RESPONSE

Now that the defendants have been served with your complaint and summons, they will react in one of the following ways:

- Attempt to negotiate a settlement;
- File an Intention to Defend and argue their side of the case in court;
- Ignore the complaint entirely, thus allowing you to win by default;
- Claim they were not properly notified; and/or
- File (or threaten to file) a countersuit against you or your company.

Here is what you may want to consider in deciding your next move:

WHAT IF THE DEFENDANT ATTEMPTS TO NEGOTIATE A SETTLEMENT?

Even if you were unsuccessful in your initial attempts to negotiate a settlement, you should listen to what your opponent may offer at this point.

Now that the defendant realizes you have a good case and are serious about going to trial, you may be in a better position to reach a reasonable resolution without going to trial. Review the information in the Introduction under Step 1—Try to Resolve the Issue Out of Court. Your opponent may also be willing to consider mediation at this point.

WHAT IF THE DEFENDANT FILES A NOTICE OF INTENTION TO DEFEND?

If the defendant files a Notice of Intention to Defend, the court will notify you. The Notice of Intention to Defend includes space for the defendant to explain why he or she should not be required to pay you the money you claim you are owed. If the defendant chooses to list a reason, the notice you receive from the court will include that reason. Take note of the defendant's claim. You need to be prepared to explain to the judge why the defendant's argument is not valid. Make sure you bring your exhibits and evidence.

WHAT IF THE DEFENDANT IGNORES THE COMPLAINT AND SUMMONS?

If you requested Affidavit Judgment, and the defendant fails to respond to your complaint, you might receive your judgment without having to appear for trial. The court will simply send you a notice confirming the date on which the judgment was entered, the amount of the judgment, and any additional amounts found to be due from the defendant such as court costs or interest.

However, the judge may find that you have not presented enough proof of your version of the case. If the judge declines to sign the order entering the judgment, you will be notified of a new trial date on which to appear and present your evidence.

WHAT IF THE DEFENDANT CLAIMS THE NOTIFICATION WAS NOT RECEIVED?

Defendants may claim they were not properly served with your complaint and summons in one of two ways: (1) by filing a pre-trial request that the case be dismissed for improper service; or (2) by making the argument at the trial. In either case, the trial is postponed, and you may have to have the defendant re-served with a new summons.

WHAT IF THE DEFENDANT FILES A COUNTERCLAIM?

Sometimes defendants respond to a lawsuit by filing one of their own. If filed in the same action, what would otherwise be called the defendant's complaint is called a "counterclaim."

A counterclaim is basically the defendant's way of saying "I don't owe you money. You owe me money." You must always be prepared to answer the defendant's counterclaim. Consider any additional evidence you may need in order to disprove the counterclaim, and prove to the judge that your claim is right.

DO YOU NEED A LAWYER?

Although you are not required to use a lawyer for a small claim, you may still want to get one. An analogy would be that even if you read a book on how to build an addition on your house, you may still want to hire a builder. With a project so big, the consequences of failure are too great. Most people would call in an expert for such a big job, but might try a smaller building project themselves.

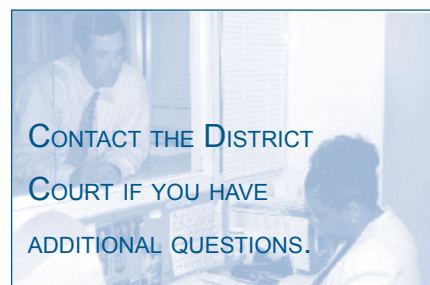
So it is with the law. In making the decision about whether you need a lawyer, you will need to consider how skilled you feel at explaining your side of the story to the judge; how well you understand the laws that apply to your situation; how much time you have to do the paperwork and research required; and the cost to you if you do not win.

If the defendant files a counterclaim seeking a few hundred or even a few thousand dollars, you may still be well-advised to represent yourself without an attorney, especially if hiring an attorney would cost more than the claim is worth. As the numbers increase, however, so does your risk. If the worst happens, and the judge finds against you on your complaint and awards the defendant every penny of his claim, could you afford the loss easily? If so, you could chalk it up to a learning experience and move on. If not, and a loss could devastate or even destroy your personal assets or your business, seek the assistance of an attorney.

NEXT STEPS

Once you have filed your small claim, and you are waiting for your trial date, it is time to begin preparing for your day in court. This will involve preparing an opening and closing statement, selecting and preparing witnesses, and organizing your exhibits and presentation.

Please feel free to contact a District Court clerk if you have any questions about the next steps, or any information in this booklet. We hope you will find this information helpful.



CHECKLIST

The following checklist is provided for your convenience to help you track the progress in your case. The page numbers indicated contain more information about the specific aspects of filing a small claim.

Small Claim Filed with District Court on (see p. 8):

Case No.

Trial Date/Time:

Location of Trial:

Served Complaint to defendant (see p. 12):

By Court:

By Self:

Sheriff/Constable

Certified Mail

Certified Mail

Private Process

Complaint was:

Served on:

Proof of service submitted to court on (see p. 18)

Returned Unserved on:

Reason:

Requested Summons Renewal on (see p. 18)

By Court:

By Self:

Sheriff/Constable

Certified

Mail

Certified Mail

Private Process

Proof of Service submitted to court on (see p. 18)

Notice of Intention to Defend filed on (see p. 20)

Defendant's Response (see p. 20)

Defendant's Attorney and Address: